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[See signature page for additional counsel]

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

HTC CORPORATION, HTC AMERICA,  
INC.,

Plaintiffs,

v.

TECHNOLOGY PROPERTIES  
LIMITED, PATRIOT SCIENTIFIC  
CORPORATION, and ALLIACENSE  
LIMITED,

Defendants.

Case No. 5:08-cv-00882 PSG

**JOINT REQUEST TO DISMISS ALL  
CLAIMS RELATING TO U.S. PATENT  
NO. 5,530,890 UNDER F.R.C.P. 41(a)(2)**

~~PROPOSED~~ ORDER THEREON

The Honorable Paul S. Grewal

**WHEREAS** plaintiffs HTC Corporation and HTC America, Inc. (collectively “HTC”) filed a First Amended Complaint seeking a declaratory judgment that HTC does not infringe any valid and enforceable claim of U.S. Patent No. 5,530,890 (the “’890 patent”);

**WHEREAS** defendants Technology Properties Limited, Patriot Scientific Corporation, and Alliacense Limited (collectively “Defendants”) filed an Answer and Counterclaim denying HTC’s averment that HTC did not infringe any valid and enforceable claim of the ’890 patents,

1 and asserting a counterclaim of infringement regarding the '890 patent;

2       **WHEREAS** the '890 patent was subject to *ex parte* reexamination with a reexamination  
3 certificate issuing on March 1, 2011;

4       **WHEREAS** on September 17, 2013, the Court issued an order granting-in-part HTC's  
5 motion for summary judgment based on the intervening rights doctrine, concluding that "any  
6 claims of infringement before the date of the issuance of the reexamination certificate [of the '890  
7 patent] must be precluded" (Dkt. No. 585, at 20:17-18) ("Summary Judgment Order");

8       **WHEREAS** the HTC products accused of infringing of the '890 patent did not generate  
9 revenue in the United States in 2011 or thereafter;

10       **WHEREAS** based on the Summary Judgment Order and the HTC products accused of  
11 infringing the '890 patent in the present action, Defendants cannot establish entitlement to  
12 damages under any claim of the '890 patent under 35 U.S.C. § 284;

13       **WHEREAS** Defendants respectfully believe that the Summary Judgment Order is  
14 erroneous with respect to intervening rights on the '890 patent, and reserve their right to seek  
15 review by the U.S. Court of Appeals for the Federal Circuit after entry of final judgment in this  
16 action;

17       **WHEREAS** in order to conserve judicial resources and streamline these proceedings, and  
18 without prejudice to the rights of any party to appeal all or part of the Summary Judgment Order  
19 or any other order for which an appeal is permissible, the parties respectfully request that the  
20 Court order, as follows:

21  
22       **1.**       Because Defendants cannot establish entitlement to damages in the present action  
23 based on the Summary Judgment Order, the Court hereby **DISMISSES** the Fifth Claim for Relief  
24 in HTC's First Amended Complaint (seeking a declaration that HTC does not infringe any valid  
25 and enforceable claim of the '890 patent), and Count IV of Defendants' Answer and  
26 Counterclaim (alleging infringement of the '890 patent), subject to the conditions of this Order.

27       **2.**       This Order shall not affect any other claim or counterclaim asserted in the present  
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KIRBY NOONAN LACE & HOGE

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Attorneys for Defendant  
PATRIOT SCIENTIFIC CORPORATION

**FILER'S ATTESTATION**

Pursuant to Civil Local Rule 5.1(i)(3), the undersigned attests that James C. Otteson and Charles T. Hoge have concurred in the filing of this Joint Request to Dismiss All Claims Relating to U.S. Patent No. 5,530,890 Under F.R.C.P. 41(a)(2).

Dated: September 18, 2013

COOLEY LLP

By: /s/ Mark R. Weinstein

1 **IT IS SO ORDERED.**  
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3 Dated: September 19, 2013  
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Honorable Paul S. Grewal  
United States Magistrate Judge

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